IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Appeal No. 145 of 2001
(Old No. 190/1986)

Magan Singh ……Appellant

Versus

State of Uttaranchal ……Respondent

Shri S.S. Negi, learned Counsel for the Appellant.
Shri Nandan Arya, learned A.G.A. for the State.

Date of decision: 25 April, 2005

For the approval of:-

Hon'ble Mr. Justice Irshad Hussain
Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to the reporters for reporting? ( )

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved

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Corum: Hon Mr. Justice Irshad Hussain
Hon. Mr. Justice Prafulla C. Pant

Per: Hon'ble Prafulla C. Pant, J.

This Criminal Appeal, preferred under Section 374 of Code of Criminal Procedure, 1973, is directed against judgment and order dated 04.12.1985, passed in Sessions Trial No. 31 of 1985, by the learned Sessions Judge, Pauri Garhwal, whereby he has convicted the appellant Magan Singh under Section 302 of Indian Penal Code, 1860 (herein after for brevity I.P.C.) and sentenced him to life imprisonment.

2. In brief, prosecution story is that on 14.06.1985 at about 7:00 P.M. Pratap Singh (deceased), S/o Bahadur Singh, R/o Village Khanduli, Patti- Bali Kandarsyun, District-Pauri was coming back to his village from Bela Bazar. When he reached near the bridge, the appellant Magan Singh, S/o Govind Singh, kicked him intentionally from behind. Consequently, Pratap Singh (deceased) fell down in a gorge and suffered head injury and further went down towards the river Nayar. The

incident was witnessed by co-villagers Manbar Singh (P.W. 4), Tota Ram (P.W. 1) and Jai Krit Singh alias Jagmohan (P.W. 3) as they were also coming from Bela Bazar towards the village. They alongwith Shambu Prasad Lala at once rushed to the spot and took out Pratap Singh from the river. Pratap Singh (deceased) was taken to Bela Bazar for medical treatment where Dr. Ummed Singh Rawat gave him the first aid treatment. However, at about 8:00 P.M. he succumbed to the head injury suffered by him. First Information Report (Exh. A-1) was lodged on the very day i.e. on 14.06.1985 at about 9:00 P.M. by Sultan Singh with Patti-Patwari Bali Kandarsyun. In the First Information Report, it was further mentioned that one day before the date of the incident that is on 13.06.1985, appellant Magan Singh had a quarrel with the deceased that is why on 14.06.1985 appellant kicked Pratap Singh (deceased) with intention to throw him in the gorge. A check report (Exh. A-2) was prepared by Patti-Patwari on the same day i.e. 14.06.1985 and crime NO. 1 of 1985 was registered against the appellant under Section 302 of I.P.C. An entry (Extract Exh. A-3) was made in the General Diary on 15.06.1985. Shri Kali Ram (P.W.6)-Patti Patwari, Bali Kandarsyun, took the dead body of the deceased into his possession and prepared the Inquest Report (Exh. A-4) and investigated the crime. He recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, 1973, and prepared Site Plan (Exh. A-5). He further prepared the Mamo Exh. A-6 and Memo Exh. A-7 on 15.06.1985 after collecting the blood stained soil and blood stained clothes (of the deceased) respectively. Appellant was

arrested by the Investigating Officer and a Memo (Exh. A-8) was also prepared by him.

3. The autopsy on the dead body of Pratap Singh (deceased) was conducted by Dr. D.N. Dhyani, Medical Officer of District hospital Pauri on 16.06.1985 at about 11:00 A.M.. The Medical Officer while performing the post-mortem observed that the body was of a 45 year old person which was brought to him about 36 hours after the death. Ti was a well built body in which rigour mortis was present on the lower extremities and signs of decomposition were apparent. The doctor recorded following Ante-mortem injuries in the post-mortem report (Exh. A-10):-

1. **Abraded contusion on back in between midscapular region, oblique, 18cm x 2cm.**
2. **Abraded contusion on back, right side in posterior axillery bone 14cm x 3cm, 6cm below from allitta.**
3. **Lacerated wound on the middle of scalp, right side 6cm x 1cm bone deep. Brain matter coming out of the wound on opening the scalp. There was some collection of blood and commuted fracture of skull bone frontal, both parietal and occipital in an area of 28 cm anterior and posteriorly and on left side 30 cm bone was broken to multiple pieces.**

On internal examination, it is further recorded that second and third vertebrae were found broken. Lungs were found congested. Both chambers of heart were found empty. As to the condition of the ribs, it was found that the second rib on the left side and third rib on the right side were broken. Right pleural cavity was filled with blood. The bladder was empty. Dr. D.N. Dhyani at the end of the post-mortem report (Exh. A-10) has observed that coma and spinal shock as a result of the ante-mortem injury, was the cause of the death.

4. After completion of investigation, the Investigating Officer submitted the chargesheet (Exh. A-9) against the appellant Magan Singh before the Magistrate concerned who after giving necessary copies to the appellant, committed the case to the Court of Sessions. Learned Sessions Judge, Pauri Garhwal, on 25.09.1985 after hearing the parites, framed charge under Section 302 of I.P.C. against the appellant Magan Singh to which he pleaded not guilty and claimed to be tried. The prosecution, thereafter got examined P.W. 1 Tota Ram (eye witness), P.W. 2 Ganeshi Devi, P.W. 3 Jaikirth Singh alias Jagmohan (eyewitness), P.W. 4 Manbar Singh (eye witness), P.W. 5 Sultan Singh (informant) and P.W. 6 Kali Ram Patwari (Investigating Officer). Genuineness of post-mortem report (Exh. A-10) was admitted by the learned defence counsel before trial court and its formal proof was dispensed with. The entire evidence was put to the accused under Section 313 of Code of Criminal Procedure, 1973, to which he alleged it to be false. No evidence was given in defence. Learned Sessions Judge after hearing the parties, found the charge

proved against the appellant and convicted him under Section 302 of the I.P.C. and sentenced him to life imprisonment. Aggrieved by the same this appeal has been preferred.

5. We heard learned Counsel for the appellant and learned Assistant Govt. Advocate and perused the entire evidence on record.

6. P.W. 1 Tota Ram, who is produced by the prosecution as an eye witness, has stated that on 14.06.1985 at 7:00 P.M. when he was coming back from Bela Bazar towards the village Khanduli. Pratap Singh (deceased) who was behind him, along with his son Jaikirth Singh (P.W. 3) was also coming towards the village, and Manbar Singh (P.W. 4) was following them. When Pratap Singh reached near the bridge, he heard some sound and looked back. He saw appellant Magan Singh pushing Pratap Singh (deceased) who fell down into the river after being struck against a rock. This witness, further states that he along with Manbar Singh (P.W. 4) and Jaikirth Singh (P.W. 3) went down the hill along with one Shambhu Prasad, nearby shopkeeper of the vicinity, and took out Pratap Singh (deceased) from the river. At that time Pratap Singh (deceased) was bleeding from his head and was unconscious. This witness further states that appellant Magan Singh was arrested in the village on that very day with the help of the villagers of Patti Patwari Bali Kandarsyun. P.W. 1 Tota Ram has further stated that he got the F.I.R. lodged with the help of Sultan Singh (P.W. 5). The statement of this witness was corroborated by P.W. 3, Jaikirth Singh alias Jagmohan who is minor son of the deceased. This witness has also stated on oath that his father who already

had a broken leg, was kicked from behind by the appellant due to which his father fell down from the bridge. The witness further states that the incident was also witnessed by P.W. 1 Tota Ram, P.W. 4 Manbar Singh and others who helped him in taking out Pratap Singh (deceased) from the river. P.W. 4 Manbar Singh is also an eye witness and he has also corroborated the story as narrated by P.W. 1 Tota Ram and P.W. 3 Jaikirth alias Jagmohan. P.W. 5 Sultan Singh has proved that he lodged the F.I.R. (Exh. A-1) with Patti-Patwari Bali Kandarsyun pm the same day.

7. P.W. 2 Ganeshi Devi is the Aunt of the appellant. She has stated that one day before the date of the incident, appellant had threatened the deceased not to date to help her in withdrawing the money of her late husband. Pratap Singh (deceased) was maternal father in law of this witness. P.W. 2 Ganeshi Devi has further stated that Pratap Singh, next day helped her in withdrawing money of her late husband, from the bank. This made the appellant to give a lesson to the deceased and to attain the same he kicked the deceased from the bridge. As such this witness has proved the motive of commission of crime on the part of the appellant.

8. The ocular evidence as narrated above, corroborated by the ante-mortem injuries and cause of death mentioned in the post-mortem report, fully proves the fact that appellant committed culpable homicide by causing death of Pratap Singh. Appellant has, as proved above, certainly caused death of Pratap Singh (deceased) by his act. To that extent we are in agreement with the learned trial court. But we are not in agreement with the

learned trail court that the act on the part of the appellant resulted in the commission of offence of culpable homicide amounting to murder. Rather we are of the view that since the appellant has only kicked a lame person who fell down from the bridge into the river and died, there doesn't appear to be clear intention on the part of the appellant to cause death but certainly he has caused such bodily injury to the deceased which was likely to cause his death. We are of the opinion that had there been intention to commit murder, the appellant would have been armed with some deadly weapon or would have caused such bodily injury which have left the victim dead. But in the present case the appellant was not armed with any weapon and had only kicked the victim near a bridge. The deceased being lame person, it made him to lose his balance and he fell down from the bridge. As such the act on the part of the appellant was an act "with the knowledge that it is likely to cause death but without any intention to cause death". This view gets supported by the principle of law laid down in M.T. Nambiar Vs. State of Kerela AIR 1997 SC 687, Jawahar Shah Vs. State of Bihar 1997 SCC (Criminal) 841 and Ram Kishun Vs. State of Rajasthan (1997) 7 SCC 518. Therefore, the offence committed by the appellant Magan Singh, is covered under Part-II of Section 304 of the I.P.C. and not the one under Section 302 of I.P.C. That being so, the appellant should have been convicted under Section 304 (Part-II) instead of one under Section 302 of I.P.C.

9. Accordingly the appeal deserves to be partly allowed. And the same is allowed partly. Appellant is acquitted of the charge under Section 302 of I.P.C. Appellant was arrested on 15.06.1985 and was tried as an

under trial. He was released on bail during the pendency of appeal when an order to admit him to bail was passed on 08.05.1989. Subsequent to this bail bonds were furnished and the appellant remained in detention for nearly four years. He was aged 21 years when he was convicted for the offence. Considering the totality of the circumstances of the case we think that the sentence for the period already undergone i.e. three years and ten months, shall be sufficient to meet the ends of justice and no useful purpose will be served by sending the appellant against to prison. Therefore the appellant is sentenced to imprisonment already undergone under Section 302 Part-II I.P.C. He need not surrender. His bail bonds are cancelled.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt: 25 April, 2005
Sweta